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AISHA TA'TU WALKER
Tenant/Petitioner,

v.

MICHELE MINOR
Housing Provider/Respondent.

Case No.: RH-TP-07-29013
In re 1442 Independence Avenue, S.E.
Unit 1

FINAL ORDER

I. INTRODUCTION

This matter came on for hearing on October 29, 2007, when only Tenant/ Petitioner Aisha Ta'Tu Walker appeared. No appearance was made for Housing Provider/Respondent. At the hearing, Ms Walker orally asked to dismiss certain claims made in the Tenant Petition (TP) she filed on July 20, 2007. Claims listed on the TP that Tenant chose not to pursue were: 1) A security deposit was demanded after she moved where no security deposit had been demanded or received before; 2) Coercion was used by Housing Provider to obtain signatures on a voluntary agreement; 3) Ineligible signatures were included among the signatures of tenants who approved a voluntary agreement; and 4) Retaliatory action had been directed against her. I granted Tenant's request to withdraw those claims.

Claims remaining are: 1) services and facilities in her rental unit had been substantially reduced; 2) an unlawful notice to vacate was sent to her; and 3) housing code violations were present in Tenant's unit.

II. FINDINGS OF FACT

1. Notice of the October 29, 2007, hearing was sent to the parties by Case Management Order (CMO) mailed on September 28, 2007. Delivery to Housing Provider at 1416 Massachusetts Avenue, S.E. was confirmed by the U.S. Postal Service on September 29, 2007 (receipt number 0306 3030 0000 0794 2214). Housing Provider did not request a postponement of the hearing.
2. The housing accommodation subject to the instant action is located at 1442 Independence Avenue, S.E. Tenant/Petitioner (Tenant) rented Apartment 1 in early March 2007 from Housing Provider/Respondent (Housing Provider) Michele Minor.
3. Tenant Aisha Walker and Housing Provider Michele Minor agreed to a month to month rental at \$875 per month.
4. At the time they entered into a lease agreement, the parties agreed that Tenant would not have to pay for gas in her unit until separate meters were installed. Housing Provider paid for gas for March. In April and May, 2007, Tenant paid an average of \$65 for each month, even though separate meters had not been installed. The record is not clear about the status of payment for gas after May 2007.
5. There was no mailbox for Tenant's unit at any time of her tenancy, although at the time of the initial rental, Housing Provider told Tenant she would have mailboxes installed. Mail for all tenants was collected together in a common mailbox.

6. At the hearing, Tenant described her unit as “fair” in March of 2007, which to her meant that there were no mice or insects in the unit and the unit was dry. However, there was a hole in the floor in the laundry room and a problem with the screen door in her unit. Because the door was hard to open, Tenant feared that she would not be able to get out of the unit in the event of a fire. In April 2007, Tenant’s unit flooded from the outside. Tenant informed housing Provider, who did not respond until the second day after the flood. Tenant’s clothing and carpet were ruined; her furniture was damaged.
7. In May, 2007 Tenant noticed ceiling dampness in her unit. Paint was peeling.
8. In June 2007, after a tenant in another unit moved out, Tenant noticed a proliferation of mice in her unit. In two days, she caught four mice. Tenant telephoned Housing Provider and reported that she had a “really bad bug and mice problem.” In response to that notice, Housing Provider inserted plugs in a few spaces, but did nothing more. The mouse problem persisted for two months.
9. On July 12, 2007, a Housing Inspector from the Department of Consumer and Regulatory Affairs (DCRA) inspected Tenant’s unit. Housing Provider was present during the inspection.
10. The inspector issued citations for six violations that each had a 15 day abatement period, with potential fines totaling \$1,900. Tenant’s Exhibit (PX) 100.

11. In addition, the inspector identified six violations that each had a one day abatement period, with potential fines totaling \$7,600 (PX 101). One violation on that list was that a secure mail receptacle was not provided.
12. The third set of code violations identified by the inspector on July 12, 2007, carried an abatement period of three days and total potential fines of \$1,000. PX 102.
13. Tenant moved out of the unit on August 14, 2007. At that time, there were insects in the unit, but no mice. The mouse problem lasted about two months. The mailbox and screen door problems remained.

III. CONCLUSIONS OF LAW.

1. First, I must address the propriety of proceeding in the Housing Provider's absence. The Case Management Order (CMO) was mailed to both parties in conformity with D.C. Official Code § 42-3502.16(c), which requires that notice of hearing "shall be furnished the parties by certified mail or other form of service which assures delivery at least 15 days before the commencement of the hearing." The United States Postal Service confirmed delivery to Michele Minor, Housing Provider. Accordingly, Housing Provider received proper notice of the hearing date. *See Dusenbery v. United States*, 534 U.S. 161, 167-71 (2002); *McCaskill v. District of Columbia Dep't of Employment Servs.*, 572 A.2d 443, 445 (D.C. 1990). ("There is a presumption that correspondence mailed and not returned to the agency is received.") Proceeding in her absence was therefore appropriate.

2. Among the information contained in the CMO is the statement on page 4 that the “Administrative Law Judge will decide the case based upon the evidence presented by the parties at the hearing. The Administrative Law Judge WILL NOT LOOK at the RACD’s files for documents that support either party’s case.” Continued on page 5 is the admonition, “[i]f either party to this case wants the Administrative Law Judge to look at a copy of any document in the RACD’s files for the housing accommodation at issue in this case, it is that party’s responsibility to bring to the hearing a stamped original or a properly certified copy from RACD.” (emphasis added) *See also* OAH Rule 2934.1.
3. Although Tenant has the burden to prove allegations in her petition, it is the burden of the Housing Provider to prove an exemption from the rent stabilization provisions of the Rental Housing Act. *See Revithes v. District of Columbia Rental Hous. Comm’n*, 536 A.2d 1007, 1017 (D.C. 1987). Because Housing Provider did not appear at the hearing, no forms she may have filed with the Rent Administrator that could have helped her defense ever became part of the record. Furthermore, she was not aided by testimony supporting any defense. Even if the small landlord exemption form appended to the tenant petition had become part of the record, Housing Provider would need to prove at hearing that the assertions made were accurate. *Id.* In her absence, that could not be done. Therefore, the merits of Tenant’s claim must be considered.

A. Reduction in services and facilities

4. Tenant alleges that related services and facilities in her rental unit had been substantially decreased. Specifically, she argues that the reductions included the cost of the gas she paid in April and May, for the problem with the screen door that she described as a fire hazard because it was so hard to open, the problem with mice and for water damage.
5. If Tenant can prove that “related services or related facilities” were “substantially” reduced, the rent charged Tenant may be decreased “to reflect proportionally the value of the change in services or facilities.” D.C. Official Code § 42-3502.11.
6. Tenant’s allegations invoke two statutory definitions.

A related facility is:

any facility, furnishing, or equipment made available to a tenant by a housing provider, the use of which is authorized by the payment of rent charged for a rental unit, including any use of a kitchen, bath, laundry facility, parking facility, or the common use of any common room, yard, or other common area.

D.C. Official Code § 42-3501.03(26).

“Related service” means:

services provided by a housing provider, required by law or by the terms of the rental agreement, to a tenant in connection with the use and occupancy of a rental unit, including repairs, decorating and maintenance, the provision of light, heat, hot and cold water, air conditioning, telephone answering or elevator services, janitorial services, or the removal of trash and refuse.

D.C. Official Code § 42-3501.03(27).

7. “If related services or facilities at a rental unit or housing accommodation [are] decrease[d] . . . and are not promptly restored to the previous level, the housing provider shall promptly reduce the rent for the rental unit . . . by an amount which reflects the monthly value of the decrease in related services or facilities.” 14 DCMR 4211.6
8. Housing Provider breached the agreement with Tenant to pay for gas until separate meters were installed. Consequently, it was a reduction in services in the two months¹ when Tenant paid for that service.
9. I agree with Tenant that the screen door was difficult to open. However, without more specific evidence about how that difficulty affected her, I cannot accept her characterization that it was actually a fire hazard and substantial reduction of services under the Act.
10. Next, housing provider’s failure to control rodents in a more expeditious manner with necessary repairs was a reduction in services for two months of the tenancy.
11. Finally, the provision of a secure mailbox is a related service under the Act. Tenant was promised a mailbox when she agreed to rent the apartment, and the failure to provide it was identified as a violation of the housing code. No evidence has been provided to show that the problem had been abated when Tenant moved. Lack of a secure place to receive mail was a reduction.

¹ Testimony about what was paid for gas in the summer months was too vague to support an award for more than two months.

12. The question of substantiality of a reduction in services goes to the degree of the loss. *See Interstate General Corp. v. District of Columbia Rental Housing Com.*, 501 A.2d 1261, 1263 (D.C. 1985). Taken alone, each of the reductions -- two months of rodents, lack of a mailbox and two months of paying the gas bill -- would not be “substantial,” entitling Tenant to a remedy, but collectively they are. Because the duration of each reduction is different, however, a computation is assessed for each: \$10 per month for the mice, and \$5 for the lack of mail box, and \$65 for the gas.
13. Tenant complained that it took two days for Housing Provider to respond to the flooding in April, 2007, suggesting that such a delay constitutes reduction in service. I disagree. Although the response time was not to Tenant’s liking, it was reasonably prompt, negating any claim that it was a substantial reduction in service or facility. Further, Tenant claims that clothing and carpets were damaged by water, but the Rental Housing Act does not provide a remedy for that damage. Any recourse Tenant might have for such damage would be in another forum.
14. As noted above, the remedy for a reduction in services and facilities is a reduction in rent. In a case such as this, payment must be made directly to Tenant because she no longer lives in the unit that is the subject of the dispute.
15. The table in Appendix B reflects calculations for a decision issued ____, 2008. It reflects the new interest rate on judgments established and now used in D.C. Superior Court. Interest calculations are calculated from the

date of reduction in services and facilities to the date of the issuance of the decision. 14 DCMR 3826.2. The interest rate on judgments is 5% per annum, 0.004 per month, effective January 1, 2008.

16. In sum, the total owed Tenant for the reduction in services and facilities, including interest, is \$184.71.

B. Housing Code Violations

17. Next, Tenant provided evidence of Housing Code Violations. The applicable statute, D.C. Official Code § 42-3502.08 (a)(1)(A) states: that the rent for any rental unit shall not be increased above the base rent unless the rental unit is in substantial compliance with the housing regulations.

18. In this case, there is no evidence of a rent increase at any time Tenant lived at the Property, consequently there is no rent increase to invalidate under the applicable statute. *See Hutchinson v. Home Reality, Inc.*, TP 20,523 (RHC Sept. 5, 1989), citing *Nwanko v. William J. Davis, Inc.*, TP 11,728 (RHC Aug. 6, 1986), *aff'd*, 542 A.2d 827 (D.C. 1988).

19. Nor is there evidence to support Tenant's contention that an unlawful Notice to Vacate had been served on her.

IV. ORDER

Therefore, it is this **3rd** day of April 2008:

ORDERED, that Housing Provider Michele Minor must pay Tenant Aisha Walker a total of \$184.78 for reduction in services and facilities, including interest; and it is further

ORDERED, that all other claims are **DISMISSED**; and it is further

ORDERED, that either party may move for reconsideration of this Final Order within ten business days under OAH Rule 2937.1, 1 DCMR 2937.1; and it is further

ORDERED, that the appeal rights of any party aggrieved by this Final Order are stated below.

/s/
Margaret A. Mangan
Administrative Law Judge